



2026:AHC-LKO:3332-DB

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CUSTOM APPEAL No. - 19 of 2025

Commissioner Of Customs (Preventive) Lucknow

.....Appellant(s)

Versus

Shri Sarad Chand Agrahari @ Sharad Chand
Agrahari

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

WITH

CUSTOM APPEAL No. - 17 of 2025

Commissioner Of Customs (Preventive) Lucknow

.....Appellant(s)

Versus

Shri Manoj Kumar Nisad @ Manoj Kumar Nishad

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

WITH

CUSTOM APPEAL No. - 18 of 2025

Commissioner Of Customs (Preventive) Lucknow

.....Appellant(s)

Versus

Shri Ramesh Chand

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

WITH

CUSTOM APPEAL No. - 20 of 2025

Commissioner Of Customs (Preventive) Lucknow

.....Appellant(s)

Versus

Shri Rajan Kumar Sahani

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

WITH

CUSTOM APPEAL No. - 14 of 2025

Commissioner Of Customs (Preventive), Lucknow

.....Appellant(s)

Versus

Shri Santosh Kumar

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

WITH

CUSTOM APPEAL No. - 21 of 2025

Commissioner Of Customs (Preventive), Lko.

.....Appellant(s)

Versus

Avinash Kumar Dwivedi Alias Pandit

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava
Counsel for Respondent(s)	:	Jameel Ahmad

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.

HON'BLE MANJIVE SHUKLA, J.

(Judgement dictated in open court by Shekhar B. Saraf, J.)

1. Heard Shri Dheeraj Srivastava, learned counsel appearing for the appellants and Shri Jameel Ahmad, learned counsel appearing for the respondents.

2. The present custom appeals under Section 130 of the Customs Act, 1962 [hereinafter referred to as 'the Act, 1962'] arises out of a common order dated April 24, 2025 passed by the Customs, Excise & Service Appellate Tribunal, Allahabad, Regional Bench - Court No. 1. Since the issues involved in all these appeals are similar in nature and the decision in Custom Appeal No. 19 of 2025 would have a bearing upon all the appeals, we are deciding the specific questions of law in C.U.S.A. No. 19 of 2025.

3. In Custom Appeal No. 19 of 2025, the following substantial questions of law have been raised by the Revenue department:-

"(1.) Whether the CESTAT was justified in applying the provisions of Section 138B of the Customs Act to the 'adjudication proceedings', so as to hold that statements of co-accused cannot be relied upon and thus the proceedings are vitiated for not following the procedure specified under Section 138B of the Customs Act, 1962?

*(2.) Whether the findings of the CESTAT that the statement recorded under Section 108 and retracted later on by the maker cannot be relied upon (without bringing any evidence as to threat, inducement or promise on record) contradicts the law laid down by the Hon'ble Supreme Court in **Union of India v. Padam Narain Agarwal (2008) 231 E.L.T. 397 (S.C.)**, **Surjeet Singh Chhabra v. Union of India (1997) 89 E.L.T. 646 (S.C.)** and **KTMS Mohammed Vs UOI (AIR 1992 SC 1831)** and thus violates the principle of judicial discipline?*

(3.) Whether the CESTAT was justified in holding that the goods is not of foreign origin & not smuggled in absence of foreign markings, difference in purity of gold and the fact that seizure has taken place away from area specified under Section 6 of the Customs Act by believing on the uncorroborated and unsubstantiated claim/ story of the Respondent?

(4.) Whether the CESTAT was justified in setting aside (a) the absolute confiscation of gold bars under Section 111 (b), (1) and (m), and (b) the penalty of Rs 50,00,000/- under Section 112(b) and Section 114AA of the Customs Act imposed upon the Respondent by the adjudicating authority under the present facts and circumstances of the case?"

4. Upon perusal of the Tribunal order, the issue that arises before us is as to whether the finding of the Tribunal at Paragraph 22 of the said order is based on material evidence that was available before the Tribunal. The Tribunal has held that the procedure prescribed under Section 138-B of the Act, 1962 was not followed, as the respondents were not granted an opportunity to cross-examine the witnesses that had been examined by the adjudicating authority. Learned counsel appearing on behalf of the Revenue department has categorically submitted and placed on record documents to indicate that at no point of time did the appellants sought cross-examination of the two persons who were found carrying gold. The Tribunal has come to a finding that Section 138-B mandatorily requires that cross-examination be provided to the noticees in the show cause notice and non-providing of such cross-examination would amount to vitiating the procedure under Section 138-B of the Act, 1962.

5. Learned counsel appearing on behalf of the appellants has relied on the CBIC Master Circular on Show Cause Notice, Adjudication and Recovery-reg., having Circular No. 1053/02/2017-CX dated March 10, 2017 and submits that specifically Paragraph 14.9 states that the adjudicating officer is bound to provide cross-examination, if the noticee makes a request for cross-examination of the person, whose statement is relied upon in the show cause notice. He further relies on a Delhi High Court judgment in ***Devi Dayal Vs. Union of India*** reported in **2002 (144) ELT 502 (Del.)** wherein it has been held that when the noticee had not specifically asked for production of the persons for cross-examination, even though the materials were brought to his notice, the grievance relating to non-observance of principles of natural justice would not appeal to the Court. The Special Leave Petition against the said judgment that was taken up before the Hon'ble Supreme Court was also dismissed by the Hon'ble Supreme Court. He has further relied on several judgments as in the case of ***Kannungo & Co. Vs. Commissioner of Customs, Calcutta and others*** reported in **1983 (13) ELT 1486 (SC)**; ***Lakshman Exports Limits Vs. Collector of Central Excise*** reported in **2002 (143) ELT 21 (SC)**; ***Sushil Aggarwal Vs. Principal Commissioner of Customs*** reported in **(2025) 30 Centax 482 (Del.)**; ***Surjeet Singh Chhabra Vs. Union of India*** reported in **1997 (89) ELT 646 (SC)**; and ***Naresh J.***

Sukhwani Vs. Union of India reported in **1996 (83) ELT 258 (SC)** to indicate that there would be violation of the principles of natural justice only when the show cause noticee demands cross-examination and the same is not provided for by the adjudicating officer.

6. Learned counsel on behalf of the respondents / noticees has relied on the judgments of the Hon'ble Supreme Court and various High Courts as in the case of ***Jindal Drugs Pvt. Ltd. Vs. Union of India*** reported in **2016 (340) E.L.T. 67 (P&H)**, ***Andaman Timber Industries Vs. Commissioner of C.Ex. Kolkata-II*** reported in **2017 (50) STR 93 SC** and ***Commissioner of Central Excise, Meerut-I Vs. Parmarth Iron Pvt. Ltd*** reported in **2010 (260) E.L.T. 514 (All)** to support the order passed by the Tribunal wherein the Tribunal has held that the procedure required under Section 138-B of the Act, 1962 has not been followed thereby making the adjudication proceedings vitiated for not adhering to the principles of natural justice.

7. Before entering into the conclusion and analysis, we would like to bring on record Section 138-B of the Act, 1962, which reads as follows:-

"138B. Relevancy of statements under certain circumstances.-(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, any any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]"

Conclusion & Analysis

8. Before entering into the merits, one must examine the exposition of law relating to the application of principles of natural justice by the Hon'ble Supreme Court and various High Courts. The High Court at Calcutta in **M/S. Nepa Agency Co. Pvt. Ltd & Anr vs Union Of India & Ors** reported in **(2015) SCC Online Cal 3597** decided on May 13, 2015, while dealing with a similar contention examined the principles of natural justice. The Court held that the denial of cross examination in customs adjudication did not, by itself, constitute a violation of natural justice. The relevant paragraphs of the judgment are quoted herein below:

"(12) On the point of natural justice, Mr. Sarf relied on a decision of the Hon'ble Supreme Court in the case of M/s. Kanungo & Co.-vs.-Collector of Customs reported in (1973) 2 SCC 438. Ld. Counsel relied on paragraph 12 of the judgement which is set out hereunder:-

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show- cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

(13). Mr. Saraf also relied on a decision of the Hon'ble Supreme Court in the case of A.S. Motors Pvt. Ltd.-vs.-Union of India rendered in Civil Appeal No. 1517 of 2013 (arising out of SLP (C) No. 2490 of 2008). In the said case the Hon'ble Supreme Court observed that the principles of natural justice have undergone a sea change. Presently the principle of law is that some real prejudice must have been caused to the complainant. Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, the distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The court applies the principles of natural justice having regard to the affected situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a strait-jacket formula."

9. The aforesaid position finds support in the decision of the Hon'ble Supreme Court in **A.S. Motors Private Limited v. Union of India and Others** reported in (2013)) 10 SCC 114 as cited in **M/S. Nepa Agency Co. Pvt. Ltd.** (Supra) wherein the Hon'ble Supreme Court elucidated the latest position of law with regard to principles of natural justice. The relevant paragraphs of the judgment are quoted herein below:

"(8). Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint

based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice."

10. Hon'ble the Supreme Court has, in earlier occasions as well, cautioned against "strait-jacket" application of principles of natural justice. In **Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi** reported in (1991) 2 SCC 716 the Court observed as follows:

"(22). ...The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration."

11. Upon a perusal of Section 138-B of the Act, 1962, it is clear that there is no specific requirement for allowing cross-examination. Furthermore, the law established by the Hon'ble Supreme Court and various High

Courts as discussed above is that in the event, any material is relied upon by the authorities, any witnesses are examined by the authorities, upon a request made by the show cause noticee, the said relied upon documents are to be provided to the noticee and the witnesses that have been examined and whose statements are being relied upon by the authorities shall be subject to cross-examination by the noticee. The law does not mandate that in each and every case, cross-examination is required to be provided. We are of the view that it is incumbent upon the noticee to seek cross-examination of the witnesses, and if such a request is made, it is mandatory for the authorities to provide such cross-examination. In the event, such cross-examination is not possible, the adjudicating authority in his order has to specifically note down the reasons as to why the witnesses could not be subjected to cross-examination. Such reasons could be as specified in Section 138-B such as death of the witness, the witness being incapable of giving evidence, the witness not being traceable, amongst others.

12. The judgements relied upon by respondents/noticees do not come to their assistance as in each of the cases it is categorically mentioned that it would be open to the assessee to seek permission to cross-examine the persons whose statements have been relied upon and only if upon such request being made and the same not being complied with, then there would be a violation of the principles of natural justice. Even in such cases, as indicated above at paragraph 11, if the witnesses are not available to be cross-examined, the adjudicating authority would mention the reason for not providing such cross-examination to the respondent/noticees.

13. In the present case, the appellants have categorically submitted that at no point was a request made for cross-examination of two witnesses, and therefore, there was no question of violation of the principles of natural justice. This particular fact has not been answered specifically by the Tribunal, and without answering the said question as to whether a request was made for cross-examination, the finding of the Tribunal that the principles of procedure established under Section 138-B of the Act, 1962 have been vitiated, in our view is against the principles established in law. It was incumbent upon the Tribunal to first come to a finding as to

whether a request was made by the noticee. If the answer was in the affirmative, then only the Tribunal could have held that the procedure prescribed under Section 138-B of the Act, 1962 was not followed. However, if the answer to the above question were to be in the negative, we are of the view that the finding of the Tribunal that the procedure prescribed under Section 138-B of the Act, 1962 was not followed, would be incorrect.

14. Though, the appellants have herein brought on record certain documents to indicate that no request for cross-examination was made, we are of the view that since the Tribunal is the last fact finding body, this issue should be decided by the Tribunal upon calling for the records of the adjudicating authority and other relevant records.

15. In light of the same, we quash and set aside the order dated April 24, 2025 and direct the Tribunal to come to an appropriate finding with regard to the issues raised in the present judgment.

16. In light of the aforesaid, all the Custom Appeals are **allowed** and the Tribunal is directed to *de novo* hear the matter expeditiously, preferably within a period of three months from the date of receipt of certified copy of this judgment.

January 16, 2026
Lokesh Kumar

(Manjive Shukla,J.) (Shekhar B. Saraf,J.)